MADOKERO SERVICE STATION
versus
NOBLE MUROMBA

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE; 31 January 2023 & 7 February 2023

Urgent Court Application – Interdict Defamation

Mr *E Mubaiwa*, for the applicant
Mr *T R Mugabe*, for the respondent

MUSITHU J: This matter was placed before the court as an urgent court application in terms of r 59(6) of the High Court Rules, 2021. The application was accompanied by a certificate of urgency justifying the extraordinary circumstances under which it was brought before the court. The periods within which further affidavits and heads of argument were to be filed, were accordingly truncated with the consent of counsel. The applicant seeks the following relief against the respondent:

"IT HEREBY ORDERED THAT:

1. The application is granted with costs on the scale of legal practitioner and client.
2. Respondent is directed to forthwith take down, delete, or remove all publications in which he alleges that applicant sells, has sold or is selling contaminated fuel to him or the public and which he posted or uploaded on WhatsApp, any electronic, inline, or social medial platform including on the following Facebook pages:
   (a) TYNWALD SOUTH RECENT STORIES
   (b) FUEL & ENERGY ZIMBABWE
   (c) ZIMBABWE FUEL SAVERS.CO.ZW
   (d) MADOKERO, TYNWALD NORTH WESTGATE ADVERTS ZIM
   (e) BULK FUEL BUYERS AND SUPPLIERS ZIMBABWE
   (f) NOBLE MUROMBA
   (g) NAME AND SHAME ZIMBABWE (CLEAN VERSION)
   (h) any other pages by any name called
3. Respondent is further barred from making any such further publications through electronic, online or any other form of media."

FACTUAL BACKGROUND

The applicant is in involved in the retail of petroleum products that includes diesel and petrol. It operates a service station under the style 'ENGEN MADOKERO' (the service station) in the Tynwald area of Harare. On 2 October 2022, the respondent filled his vehicle,

a 2016 BMW 330d (JB94YJGP), with diesel from the applicant's service station. According to his version of events the fuel tank was almost empty and it was filled to the brim. He left the applicant's premises and ran a series of errands between 2 and 3 October 2022. The car stopped running as he was enroute to the airport where he intended to catch a flight to Johannesburg South Africa latter in the day. He had to arrange for alternative transport as well as have the car toured. A local mechanic was engaged to carry out a diagnosis. The diagnosis revealed that the high pressure fuel pump had failed.

Further tests at Quest Motor Corporation also confirmed the same problem. The car could not be fixed locally as the spare parts required were not locally available. The respondent opted to have the car shipped to South Africa so that it could be fixed at BMW Centurion where it was normally serviced. The car was delivered at BMW Centurion on 13 October 2022. BMW Centurion carried out their own investigation which was concluded on 18 October 2022. The investigation revealed that the use of contaminated fuel was the cause of the damage.

After confirmation of the cause of the damage, the defendant visited the service station on 21 October 2022. He was referred to the applicant's manager, a Mr Gerald Rambayi whom he met on 22 October 2022. The CCTV images at the service station confirmed that he had indeed refuelled at the service station on the said date. He was assured that if the damage to the vehicle's fuel system was indeed caused by the applicant's contaminated diesel, then the applicant would assume responsibility for the repairs. The respondent claims that the parties further agreed that upon his return to South Africa, the diesel samples from the car would be tested to ascertain if the applicant's diesel was indeed contaminated.

After his return to South Africa, and on 25 October 2022, the respondent claims that he made contact with Gerald Rambayo, and requested that the applicant appoints a representative who would witness the extraction of the diesel from his car. This was intended to eliminate any squabbles relating to the outcome of the tests. Gerald Rambayo informed him that the applicant had decided against participating in the testing of the diesel samples from his car. Rather, the applicant opted to test the diesel at its premises. The respondent was obviously taken aback by the decision because the diesel samples at the service station was different from the diesel that was filled in respondent's car. At any rate, the same Gerald had informed him at some point that the applicant sold an average of 5000litres of diesel per day.

It was at this point that the parties reached a deadlock. The respondent nevertheless proceeded to have diesel samples extracted from his car for laboratory tests. He also lodged a formal complaint with the Zimbabwe Energy Regulatory Authority (ZERA) on 26 October 2022. By copy of a letter dated 15 December 2022, ZERA invited the parties to a meeting at its Head Office. The letter, which was addressed to the respondent and copied to the applicant, reads in part as follows:

> "**RE: ALLEGED FUEL CONTAMINATION AT ENGEN MADOKERO ON 2 OCTOBER 2022**
>
> The Authority acknowledges receipt of your complaint on 26 October 2022 against Engen Madokero following an alleged diesel fuel contamination on 2 October 2022, which was subsequently reported to Engen Madokero on 20 October 2022, 18 days after you had fuelled up your motor vehicle at the site in question.
>
> Following receipt of your complaint, Engen Madokero, through Vivo Energy, was requested to respond to the diesel fuel contamination allegation…..
>
> The Authority did not have an opportunity to sample fuel at source and carry out quality tests in a laboratory in respect of the same due to the delayed reporting. Be that as it may, the Authority is desirous of carrying out mediation in respect of the matter on 4 January 2023 with a view to find common ground between yourself and Engen Madokero."

The ZERA mediation did not resolve the dispute. The parties remained deadlocked. Suffice to state that in its response to the complaint, while acknowledging that the respondent indeed fuelled at its service station, the applicant denied that its diesel was the proximate cause of the damage to the respondent's car. It argued that the respondent, according to his own version of events, had driven the car for about 250 kilometres after refuelling and before it cut off. It further argued that where diesel was contaminated, a car could be driven for more than 5 kilometres from the source without the problem manifesting. For that reason, it averred that there may have been some underlying fault which only manifested after the vehicle had been fuelled.

The applicant also stated that on 2 October 2022, about 4500 litres of diesel had been dispensed to different types of vehicles that included top of the range vehicles and its own sister company vehicles. None of them had raised a red flag. The applicant further averred that the respondent only complained after about 18 days of fuelling, and because of the time lapse and the long travel, there was a possibility that the respondent could have refuelled elsewhere. The cause of the damage to the respondent's car could therefore not be attributed to the applicant's fuel with certainty.

The applicant averred that after the respondent's complaint, it had engaged Petrolab Zimbabwe for the testing of its diesel on site. The results showed that the fuel was not contaminated. The applicant requested the respondent to bring in a laboratory of his choice or regulatory authorities to test their fuel. The applicant reckoned that testing the fuel from the respondent's car tank was futile, because he may even have purchased contaminated fuel before he approached their service station.

The Applicant's Complaint

The applicant's complaint is that in the aftermath of the ZERA deadlock, the respondent embarked on a smear campaign that was effectually damaging its reputation. The respondent engaged several electronic and social media platforms such as WhatsApp and Facebook. He uploaded various messages wherein he alleged that the applicant had sold him contaminated fuel. He also alleged that the applicant was selling contaminated fuel to the public. Some of the pages on Facebook on which the messages appeared included the following: Tynwald South Recent Stories; Fuel and Energy; Zimbabwe Fuel Savers.Co.Zw; Madokero, Tynwald North Westgate Adverts ZIM; Bulk Fuel Buyers and Suppliers Zimbabwe; Noble Muromba, and Name and Shame Zimbabwe (Clean Version).

One of the messages shared on these platforms was as follows:

> "If you re-fuelled at Engen Madokero between 15 Sept 2022 and 15 Oct 2022 and your car had problems please app 0779055204. Section 4(2) of the Petroleum (Fuel) Regulations of 2013 makes it criminal to sell contaminated fuel. Please share as far as you can."

The applicant averred that the platforms enjoyed wide readership and had many participants who all read the message. What could be easily discerned from the message was that the applicant allegedly sold contaminated diesel between 15 September and 15 October 2022. The message also alleged that the applicant was conducting its business in a manner that violated the law. According to the applicant, the followers of these platforms understood the message in that context. This was so because on the Tynwald South Recent Stories platform, which according to the applicant boasts of 274 members, a follower by the name Stanley Makoni commented as follows:

> "Engen must be the culprits. I feel up there often too coz my factory is in that area."

The respondent responded to the message from Stanley Makoni as follows:

> "We are busy fighting for recourse with ZERA and the courts. Please share this post as far as possible, particularly with the residents of Madokero, Tynwald and surrounding areas. Motorists are enduring serious financial losses due to such unethical practices."

The applicant contends that the allegations were not only false and malicious, but were also intended to incite as well as mislead the public. The public was supposed to believe that ZERA had found the applicant culpable when it had not. The public was also meant to believe that the respondent had approached courts of law, when in fact he had not done so. To further demonstrate that the respondent was bent on maligning applicant's reputation and goodwill, the applicant argued that the respondent only had his vehicle fuelled at their service station once. But then he made a dragnet reference to the period before and after he had fuelled his car at its service station. That period had absolutely nothing to do with his vehicle.

According to the applicant the respondent did not stop his campaign to malign and spoil the applicant's name and goodwill even after the service of the application on his legal practitioners on 12 January 2023. To prove this point, the applicant filed a supplementary affidavit with this court on 16 January 2023 attaching proof of the additional messages that the respondent posted on Facebook. On 13 January 2023, the following message was posted on Facebook:

> "Why is the practice of punching diesel rampant at some of your garages e.g. Engen Madokero? Why are you dispensing contaminated diesel at your garages? Where are we supposed to get the funds to continuously repair our cars after the engine components get damaged by your fuel? To the general public: Think twice before re-fuelling at Engen garages in Zimbabwe."

According to the applicant, the statement showed that the respondent was no longer pro-occupied with motorists who re-fuelled at its service station. He was essentially telling the public that the applicant sold contaminated diesel, and therefore the public had to be wary about re-fuelling at Engen Service Stations. It was common cause that Engen Service stations are spread across the country. The fact that his complaint was in connection with events that happened at Madokero, but his message attacked all Engen Service stations just served to highlight the extent of his malice.

The above post was followed by yet another post which reads as follows:

> "How does a company improve the lives of its stakeholders by selling "punched" ie contaminated diesel to unsuspecting customers? Engen Madokero, owned by Exodus & Company participates in the unethical practice of selling punched diesel. For how long shall we endure the pain of getting our engines repaired? Enough is enough!"

The applicant averred that an interdict was therefore justified under the circumstances. It was the only legally effective avenue through which the respondent could be made to account for his malicious deeds. In as much as the respondent was aggrieved, he had to subject himself to the due process of law. He could not be permitted to take the law into his

own hands. Ultimately, it was only a court of law that was entitled to pronounce on the liability or otherwise of the applicant.

As regards the urgency of the matter, the applicant averred that the respondent went on the offensive after ZERA concluded its mediation efforts on 6 January 2023. The messages were brought to the attention of the applicant's officials who immediately engaged their legal practitioners of record for urgent remedial action. The legal practitioners wrote to the respondent's legal practitioners on 7 January 2023 requesting them to reign in their client. The communication was sent via WhatsApp as it was a weekend. A letter was served on the respondent's legal practitioners of record on 9 January 2023. There was no response. The present application was filed on 11 January 2023, some three days after the cause of the complaint. The applicant contended that it had therefore acted with the necessary promptitude expected in the circumstances.

The Respondent's Case

The opposing affidavit was sworn to and signed by a Commissioner of Oaths in South Africa. It raised three preliminary points. These are that: the application was not urgent as alleged or at all; that the application was replete with material disputes of fact and that the applicant was seeking to unlawfully restrict the respondent's freedom of expression by muzzling him from airing out his grievances as a consumer in violation of s 61(1)(a) of the Constitution of Zimbabwe. These will be dealt with later in the judgment.

Concerning the merits, the respondent did not deny that he posted the messages that the applicant found to be offensive. He alleged that he was on a fact finding mission and the facts that he related to the public through the various social media platforms were to the best of his knowledge true. He averred that he was exercising his constitutional right to freedom of expression which entitled him to freely express his opinions in public.

He further dismissed the application as a complete waste of time as the applicant should have simply reported the offensive posts to the various media platforms that he had posted and asked that they be taken down or deleted. There was no point in rushing to the courts.

The respondent also argued that he had his vehicle tested four times and the outcome confirmed that the cause of the damage was the contaminated diesel. He also insisted that the cause of the damage was the diesel from the applicant's service station. His fuel tank was virtually empty when he refuelled.

The respondent denied the accusation that he was on a campaign to besmirch the applicant's reputation and goodwill. He also denied that the posts were defamatory insisting he was merely sharing what he believed to be the truth in the absence of a contrary position from the applicant. His intention was to raise public awareness whilst obtaining valuable information to aid his ongoing criminal case that he had reported against the applicant at Mabelreign Police Station. He was yet to receive feedback on the outcome of the police investigation.

The Answering Affidavit

In its answering affidavit, the applicant impugned the opposing affidavit as irregular. The annexure referred to in the opposing affidavit, though not attached was also irregular. Neither the affidavit nor the said annexure had been attested or authenticated by a notary public as required by the rules of court. They had to be expunged from the record, which meant that the application was to proceed unopposed.

As regards the merits of the opposing affidavits, the applicant persisted with its averments that the respondent's conduct was reckless and uncalled for in the absence of conclusive proof that its diesel was the cause of the damage to the respondent's vehicle. The only way to arrest any further damage to its reputation was to grant the relief sought.

THE SUBMISSIONS AND THE ANALYSIS

Whether or not there was an opposition before the court

The court must determine the issue of the validity of the respondent's opposing affidavit at the outset before deciding on the respondent's own preliminary points. It is common cause that the respondent's opposing affidavit was deposed to in South Africa. The person who commissioned the affidavit described himself as Captain in the South African Police Service. There are six digits inscribed against his signature. The report referred to in the respondent's opposing affidavit though not attached to the affidavit, was in fact attached to the respondent's heads of argument. That report is supposed to show the results of tests that were carried out on the diesel extracted from the respondent's car. That report was subsequently tendered as part of the record by consent.

Mr *Mubaiwa* for the applicant submitted that the two documents were improperly before the court. In terms of r 85(2) both documents were supposed to be attested or authenticated before a notary public, but they were not. That made the opposing affidavit and

the annexure invalid and had to be struck off the record. There was therefore no opposition before the court.

In response, Mr *Mugabe* for the respondent urged the court to disregard the submission by Mr *Mubaiwa*, as the commissioning of the affidavit by the police officer complied with r 85(2)(c). The rule recognised documents commissioned by a Government authority of a foreign place charged with the authentication of documents under the laws of that country. Mr *Mugabe* further submitted that s 12 of the Civil Evidence Act[1] permitted the admission of photocopies of documents. In any event, that report was common cause to the parties. The parties had referred to it in their previous communication before the applicant approached this court. The applicant was therefore estopped from denying its existence.

In his brief response to Mr *Mugabe's* submissions, Mr *Mubaiwa* submitted that r 85(2)(c) did not save the respondent at all. It dealt with documents and not affidavits. In any case there was no proof that the person who commissioned the affidavit was a police officer. Concerning the annexure to the respondent's affidavit, Mr *Mubaiwa* submitted that s 12 of the Civil Evidence Act referred to by Mr *Mugabe* only applied to documents prepared within Zimbabwe and not outside. The fact that the parties had exchanged the document in prior communications did not justify non-compliance with r 85(2).

Rule 85 of the High Court rules 2021 regulates the authentication of documents executed outside Zimbabwe for use in court proceedings. It states as follows:

> ***"85. Authentication of documents executed outside Zimbabwe for use within Zimbabwe***
> (1) ……
> (2) Any document executed in any place outside Zimbabwe shall be deemed to be sufficiently authenticated for the purpose of production or use in any court or tribunal in Zimbabwe or for the purpose of production or lodging in any public office in Zimbabwe if it is duly authenticated at such foreign place by the signature and seal of office—
> (a) of a notary public, mayor or person holding judicial office; or
> (b) in the case of countries or territories in which Zimbabwe, has its own diplomatic or consular representative, of the head of a Zimbabwean diplomatic mission, the deputy or acting head of such mission, a counsellor, first, second or third secretary, a consul-general or vice-consul; or
> (c) of any Government authority of such foreign place charged with the authentication of documents under the law of that foreign country; or
> (d) of any person in such foreign place who shall be shown by a certificate of any person referred to in paragraphs (a), (b) or (c) to be duly authorised to authenticate such document under the law of that foreign country; or 89
> (e) of a commissioned officer of the Zimbabwe Defence Forces as defined in section 2 of the Defence Act [*Chapter 11:02*], in the case of a document executed by any person on active service."

[1] [*Chapter 8:01*]

Thus, a document executed in a place outside Zimbabwe will only be accepted for use in courts in Zimbabwe if authenticated by any of the persons prescribed as such in paragraphs (a)-(e) of s 85(2). Authentication is done by placing the signature and seal of office of the person so designated. Rule 85 (1) defines authentication to mean the verification of any signature thereon. The same section further defines document as any deed, written contract, power of attorney, affidavit or other writing, but does not include an affidavit sworn before a commissioner.

An affidavit sworn before a commissioner outside Zimbabwe therefore falls outside the ambit of r 85(2). It is treated differently because it would have been sworn before and attested by a commissioner outside Zimbabwe. This is clear from a reading of r 85(5), which states that *"an affidavit sworn before and attested by a commissioner outside Zimbabwe shall require no further authentication, and may be used in all cases and matters in which affidavits are admissible as freely as if it had been duly made and sworn to within Zimbabwe."* Rule 85(1) defines commissioner to mean *"a commissioner of the High Court appointed by the High Court to take affidavits or examine witnesses in any place outside Zimbabwe."* It follows that the affidavits that require authentication under r 85(2) are those that would not have been sworn before and attested by a commissioner. That type of affidavit falls within the definition of document.

The next question is whether the affidavit in *casu* is saved by r 85(2)(c) as submitted by Mr *Mugabe*. Mr *Mubaiwa* submitted that r 85(2)(c) only applied to documents and not affidavits. I do not agree with the interpretation that he ascribed to that rule. If the applicant's contention is that the affidavit ought to have been attested or authenticated by a notary public within the contemplation of r 85(2)(a), then it accepts that the affidavit fits within the definition of a document. Rule 85(2)(c) obliges the court to accept as valid documents authenticated by the signature and seal of office of a Government authority. The question that arises is whether the words *"charged with the authentication of documents"*, refers to other documents and not affidavits. In my view, those words were merely used to confirm that there are Government authorities charged with the authentication of documents. The bottom line is that an affidavit is a document as defined. The opening words of r 85(2) refer to "any document".

From my reading of rule 85, there are two sets of affidavits that are envisaged therein. There is one that falls within the definition of document as defined in r 85(1), which must be authenticated in the manner prescribed in r 85(2)(a)-(e). Then there is an affidavit referred to

in r 85(5), which is sworn before and attested by a commissioner of oaths as defined in r 85(1).

The affidavit placed before the court was purportedly signed by a Police Officer who presented himself as a commissioner of oaths. That mere description takes the affidavit outside the ambit of r 85(2). It must then be dealt with in terms of r 85(5). Rule 85(1) states that the person who authenticates an affidavit as a commissioner must be a commissioner of the High Court appointed by the same court to take affidavits or examine witnesses in any place outside Zimbabwe. The commissioner who commissioned the respondent's affidavit does not describe himself as one such person. It is not even clear if the digits endorsed next to his signature represent his Police Force number. Apart from that there is nothing to confirm that the person who commissioned the affidavit is indeed a police officer.

For the foregoing reasons, the court concludes that the opposing affidavit is clearly irregular, and must be struck out of the record. The same fate must befall the annexure to that affidavit. Not only was it not authenticated. It was attached to a document that the court has jettisoned. It is therefore bereft of any legal foundation. In *Stand Five Four Nought (Private) Limited v Salzman ET CIE SA*[2], UCHENA JA said:

> "The proper authentication of a document gives it validity. Once the authentication is rendered questionable the court cannot rely on such a document.

The court embraces the *dictum* by the learned judge of appeal. The authentication of the two documents is disputed, and the court is similarly satisfied that the opposing affidavit and the annexure thereto were not properly attested or authenticated as required by the rules of this court. There is no proper opposition before the court. The opposing affidavit and the aforementioned annexure are hereby expunged from the record. The matter will therefore proceed as an unopposed matter. Notwithstanding the absence of an opposition, I will determine the application on the merits.

THE MERITS

The applicant seeks a final interdict. The requirements of a final interdict are a well-trodden path. In *Masimba Charity Huni Fuels (Private) Limited v Kadurira & Another,*[3] MUSAKWA JA had this to say about an interdict:

> "The purpose of an interdict is to prohibit unlawful conduct, to compel the doing of a particular act or to remedy the effects of unlawful conduct. In this respect see *Herbstein* and *Van Winsen* in The Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa 5th Ed p 1454.

[2] SC 30/16 at p 4
[3] SC 39/22 at p 7 of the judgment

> The requirements for a final interdict are settled in this jurisdiction. These are:
> (a) A clear right;
> (b) Irreparable harm actually committed or reasonably apprehended; and
> (c) The absence of an alternative remedy.
>
> See *Econet Wireless Holdings and Others v Minister of Finance and Others 2001* (1) ZLR 373 (S) *Setlogelo v Setlogelo* 1914 AD 221 at 227.

> As regards a clear right, again the authors *Herbstein and Van Winsen* at page 1459-60 define the meaning of clear right as it relates to interdicts as:
> "...the word 'clear" relates to the degree of proof required to establish the right and should strictly not be used to qualify "right" at all. ...a clear right must be established on a balance of probabilities"[4]

I fully associate myself with the views of the learned judge. The gravamen of the applicant's complaint is the publication by the respondent, of material which the applicant considers false, injurious and defamatory. In its heads of argument, the applicant referred to the case of *Schweppes (Central Africa) Ltd v Zimbabwe Newspapers (1980) Ltd*[5], where the court held that:

> "Before an interdict may be granted restraining the publication of matter alleged (or admitted) to be defamatory, the court must be satisfied not only that the matter is defamatory but also that there is no defence (such as that the statement is true and for the public benefit) and that nothing has occurred to deprive the plaintiff of his remedy (such as consent to publication)."

There is no doubt that the material posted by the respondent on the various social media platforms is defamatory. It imputes criminal and unethical conduct on the part of the applicant. The applicant provides an essential service not only within the community that it operates from, but to the generality of the public. It has competitors within the industry. It has a brand and reputation to protect. Any communication that suggests criminal and unethical conduct on its part will no doubt result in the public ostracising its product. The respondent's posts are clearly inciteful. His messages constitute a warning to fellow motorists about the risks of fuelling at the applicant's service station. The power of social media cannot be downplayed. It spreads like a bushfire. The damage can be instant unless urgent corrective measures are initiated. It is in that context that the respondent's messages must be considered.

The respondent proudly owned up to the publications. But are the publications based on the truth? ZERA failed to resolve the dispute between the parties and they remained deadlocked. The applicant conducted its own investigations which revealed that its product was safe. The email thread between the applicant's officials and the respondent confirms that

[4] See also *Setlogelo* v *Setlogelo* 1914 AD 221, *Flame Lily Investments Company (Pvt) Ltd* v *Zimbabwe Salvage (Pvt Ltd and Another* 1980 ZLR 378.
[5] 1987 (1) ZLR 114 (HC)

the respondent conducted his own separate investigation. Unfortunately the outcome of that investigation is unknown to the court, although the respondent claimed that it was the applicant's contaminated fuel that caused damage to his car. The applicant denied those accusations.

It follows that at the time that the respondent posted the impugned messages on social media, there was no conclusive proof that it was the fuel from the applicant's service station that caused damage to his vehicle's fuel system.

In one of the messages the respondent claimed that he was fighting the applicant in the courts. At the time this matter was argued, the respondent had not instituted any proceedings against the applicant. His legal battles with the applicant were rather fought in the court of public opinion.

What is clear from a reading of the messages is that the respondent acted impulsively. He created a dispute and rendered a solution for himself. Instead of giving the due process of law a chance, he resorted to a smear campaign which was clearly not based on the truth. From the foregoing, the court determines that the applicant managed to establish a clear right, and that it will suffer irreparable harm if the respondent is not ordered to stop spreading those falsehoods.

To show his penchant and appetite to spread the messages even yonder, the respondent even made further posts after being served with the applicant's application. In doing so, he showed utter disregard to the court and all legal processes. The court accepts that the applicant has no other alternative remedy at this stage save for an interdict. It is only this court that can put a stop to the defamatory and inciteful posts. It is this court that can only grant an interdict. The interdict does not stop the parties from pursuing other legal processes that are at their disposal in order to get to the bottom of the matter.

In his submissions, counsel for the applicant applied for an amendment of the draft order to include a further statement directing the respondent to upload the order of this on all the pages and handles that he posted the impugned messages.

The amendment sought by the applicant is in the form of an order directing a retraction of the publication in the same media platforms that the original offensive material was published. I found no reason to deny that request. The messages that the respondent posted were not based on any established truths. For that reason they are false.

COSTS

The general rule is that the successful party is entitled to costs on a scale which must be determined by the nature of the case and the manner in which litigation was conducted. From the foregoing analysis, it is clear that the respondent conducted himself recklessly and maliciously. The publications he made on the various social media platforms were not called for when there was no conclusive evidence that the diesel that damaged his vehicle's fuel system originated from the applicant's service station.

What makes his conduct even more reprehensible is that he continued posting the offensive material even after he was served with the urgent court application. He remained undeterred and untroubled. Litigants must not be allowed to take matters into their own hands when their conduct is the subject of a legal process. This court can only endorse its seal of disapproval through an order of costs on the legal practitioner and client scale. .

DISPOSITION

Resultantly it is ordered that:

1. The application is granted with costs on the scale of legal practitioner and client.
2. The respondent is directed to forthwith take down, delete, or remove all publications in which he alleges that the applicant sells, has sold or is selling contaminated fuel to him or the public and which he posted or uploaded on WhatsApp, any electronic, online, or social medial platform including on the following Facebook pages:
    (i) TYNWALD SOUTH RECENT STORIES
    (j) FUEL & ENERGY ZIMBABWE
    (k) ZIMBABWE FUEL SAVERS.CO.ZW
    (l) MADOKERO, TYNWALD NORTH WESTGATE ADVERTS ZIM
    (m) BULK FUEL BUYERS AND SUPPLIERS ZIMBABWE
    (n) NOBLE MUROMBA
    (o) NAME AND SHAME ZIMBABWE (CLEAN VERSION)
    (p) any other pages by any name called
3. The respondent shall upload or post a copy of this order on all social media platforms on which he ascribed improper conduct to the applicant.

Sawyer & Mkushi, applicant's legal practitioners
Tafadzwa Ralph Mugabe Legal Counsel, respondent's legal practitioners